



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/171547

PRELIMINARY RECITALS

Pursuant to a petition filed January 19, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2016, at Racine, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely, and if so, whether the agency correctly ended her benefits, effective October 1, 2015, and whether it correctly determined the FoodShare allotment.

NOTE: The record was held open to give the agency an opportunity to provide the FoodShare budget and an Appointment Walk-in printout. The FoodShare Budget for October 1, 2015 has been marked as Exhibit 9 and entered into the record. The agency did not provide the Appointment Walk-in printout. The agency submitted a Participant Summary Printout, but that falls outside the scope of the hold open. As such, it was not admitted into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

1

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Lead Economic Support Specialist
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On September 19, 2015, the agency sent the Petitioner a notice advising her that effective October 1, 2015, she would not be enrolled in the FoodShare program, because she had used up her three months of time limited benefits. That same notice advised the Petitioner that her household's benefits would be reduced from \$357.00 per month to \$98.00 per month. (Exhibit 7)
3. The Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on January 19, 2016. (Exhibit 1)
4. Petitioner lives with her adult son, who is disabled. (Testimony of Petitioner and [REDACTED])

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction of benefits, or as in this case, the termination of benefits.

The agency ended the Petitioner's benefits, effective October 1, 2015. That is the date of action. The Petitioner's appeal was filed on January 19, 2016, 110 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of Petitioner's appeal concerning the ending of her benefits.

However, the Petitioner also filed an appeal to contest the agency calculation of the FoodShare benefit going to the remaining member of her household, that person being the Petitioner's disabled, adult son.

7 CFR 273.15(g) states that, "at any time within a certification period, a household may request a fair hearing to dispute its current level of benefits."

The Food Share Wisconsin Handbook echoes the Federal Regulations stating:

1. A fair hearing must be requested within 90 days from the first day that a specific agency action impacted their FoodShare benefits.
2. A fair hearing may be requested at any time within a certification period if a food unit disagrees with their current amount of Food Share benefits.

FoodShare Wisconsin Handbook (FSH) §6.4.1.1

Thus, Petitioner's appeal, with regard to the calculation of the FoodShare benefit is timely.

Looking at the information in the FoodShare Budget printout (Exhibit 9) and the information and the September 19, 2015 notice (Exhibit 7), there are some discrepancies.

According to Exhibit 7, Petitioner receives \$86.70 per month in child support, but the Budget Printout only shows \$43.35 per month in "deemed income" which is presumably the child support income. Without the actual printout from the KIDS data base, there is no way to know which is correct. In addition, it is unclear why Petitioner is receiving such income, if she has no children in her household.

According to Exhibit 7, Petitioner's household pays \$535 per month in rent, but the budget printout only shows \$267.50 per month in rent. The agency provided no documentation to prove that the rent expense it used was correct.

Finally, the budget print out shows a State SSI/Caretaker Supplement recoupment of \$8.38 per month, but the agency provided no documentation to support this.

Given the discrepancies in the information regarding the household income and expenses, the allotment calculation cannot be sustained, in the absence of documentation to support the raw numbers used for the calculation.

The agency will have to review its records and re-determine the Petitioner's household FoodShare allotment for October 1, 2015 going forward. If Petitioner disagrees with that new determination, she will have to file a NEW appeal.

CONCLUSIONS OF LAW

- 1) There is no jurisdiction to address Petitioner's appeal of the termination of her Foodshare benefits effective October 1, 2015, because her appeal of that issue is untimely.
- 2) Petitioner's appeal of the FoodShare allotment issued to her household effective October 1, 2015 going forward is timely.
- 3) The agency has not met its burden to prove it correctly calculated Petitioner's FoodShare allotment effective October 1, 2015, going forward.

THEREFORE, it is

ORDERED

That the agency review its case comments, review all verifications received, and re-determine the Petitioner's household FoodShare benefits for October 1, 2015 going forward. The agency shall issue to the Petitioner a new notice of decision, advising her of their new determination. The agency shall take all administrative steps to complete these tasks within ten days of this decision.

In all other regards, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of February, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 17, 2016.

Racine County Department of Human Services
Division of Health Care Access and Accountability